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15 **UNITED STATES DISTRICT COURT**  
16 **NORTHERN DISTRICT OF CALIFORNIA**  
17 **OAKLAND DIVISION**

18 INES BURGOS and MONGKOL  
19 MAHAVONGTRAKUL, individually and on  
behalf of other similarly situated individuals,

20 Plaintiffs,

21 v.

22 SUNVALLEYTEK INTERNATIONAL, INC.,

23 Defendant.  
24

Case No. 4:18-cv-06910-HSG

**CLASS ACTION**

STIPULATED PROTECTIVE ORDER FOR  
STANDARD LITIGATION

Judge: Honorable Haywood S. Gilliam, Jr.

1 Plaintiffs Ines Burgos and Mongkol Mahavongtrakul (collectively “Plaintiffs”), and  
2 Defendant Sunvalleytek International, Inc. (“Defendant”), have met and conferred and jointly  
3 stipulate to the following Proposed Protective Order.

4 1. PURPOSES AND LIMITATIONS

5 Disclosure and discovery activity in this action are likely to involve production of  
6 confidential, proprietary, or private information for which special protection from public  
7 disclosure and from use for any purpose other than prosecuting this litigation may be warranted.  
8 Accordingly, the parties hereby stipulate to and petition the court to enter the following  
9 Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket  
10 protections on all disclosures or responses to discovery and that the protection it affords from  
11 public disclosure and use extends only to the limited information or items that are entitled to  
12 confidential treatment under the applicable legal principles. The parties further acknowledge, as  
13 set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them to file  
14 confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be  
15 followed and the standards that will be applied when a party seeks permission from the court to  
16 file material under seal.

17 2. DEFINITIONS

18 2.1 Challenging Party: a Party or Non-Party that challenges the designation of  
19 information or items under this Order.

20 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is  
21 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule  
22 of Civil Procedure 26(c).

23 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as  
24 well as their support staff).

25 2.4 Designating Party: a Party or Non-Party that designates information or items that  
26 it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

27 ///

1           2.5    Disclosure or Discovery Material: all items or information, regardless of the  
2 medium or manner in which it is generated, stored, or maintained (including, among other things,  
3 testimony, transcripts, and tangible things), that are produced or generated in disclosures or  
4 responses to discovery in this matter.

5           2.6    Expert: a person with specialized knowledge or experience in a matter pertinent  
6 to the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness  
7 or as a consultant in this action, (2) is not a past or current employee of a Party or of a Party's  
8 competitor, and (3) at the time of retention, is not anticipated to become an employee of a Party  
9 or of a Party's competitor.

10          2.7    House Counsel: attorneys who are employees of a party to this action. House  
11 Counsel does not include Outside Counsel of Record or any other outside counsel.

12          2.8    Non-Party: any natural person, partnership, corporation, association, or other  
13 legal entity not named as a Party to this action.

14          2.9    Outside Counsel of Record: attorneys who are not employees of a party to this  
15 action but are retained to represent or advise a party to this action and have appeared in this  
16 action on behalf of that party or are affiliated with a law firm which has appeared on behalf of  
17 that party.

18          2.10   Party: any party to this action, including all of its officers, directors, employees,  
19 consultants, retained Experts, and Outside Counsel of Record (and their support staffs).

20          2.11   Producing Party: a Party or Non-Party that produces Disclosure or Discovery  
21 Material in this action.

22          2.12   Professional Vendors: persons or entities that provide litigation support services  
23 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and  
24 organizing, storing, or retrieving data in any form or medium) and their employees and  
25 subcontractors.

26          2.13   Protected Material: any Disclosure or Discovery Material that is designated as  
27 "CONFIDENTIAL."  
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1           2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a  
2 Producing Party.

3       3.     SCOPE

4           The protections conferred by this Stipulation and Order cover not only Protected Material  
5 (as defined above), but also (1) any information copied or extracted from Protected Material; (2)  
6 all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,  
7 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.  
8 However, the protections conferred by this Stipulation and Order do not cover the following  
9 information: (a) any information that is in the public domain at the time of disclosure to a  
10 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as  
11 a result of publication not involving a violation of this Order, including becoming part of the  
12 public record through trial or otherwise; and (b) any information known to the Receiving Party  
13 prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who  
14 obtained the information lawfully and under no obligation of confidentiality to the Designating  
15 Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

16       4.     DURATION

17           Even after final disposition of this litigation, the confidentiality obligations imposed by  
18 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court  
19 order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all  
20 claims and defenses in this action, with or without prejudice; and (2) final judgment herein after  
21 the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this  
22 action, including the time limits for filing any motions or applications for extension of time  
23 pursuant to applicable law.

24       5.     DESIGNATING PROTECTED MATERIAL

25           5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party  
26 or Non-Party that designates information or items for protection under this Order must take care  
27 to limit any such designation to specific material that qualifies under the appropriate standards.  
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1 The Designating Party must designate for protection only those parts of material, documents,  
2 items, or oral or written communications that qualify – so that other portions of the material,  
3 documents, items, or communications for which protection is not warranted are not swept  
4 unjustifiably within the ambit of this Order.

5 Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
6 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to  
7 unnecessarily encumber or retard the case development process or to impose unnecessary  
8 expenses and burdens on other parties) expose the Designating Party to sanctions.

9 If it comes to a Designating Party's attention that information or items that it designated for  
10 protection do not qualify for protection, that Designating Party must promptly notify all other  
11 Parties that it is withdrawing the mistaken designation.

12 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order  
13 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,  
14 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so  
15 designated before the material is disclosed or produced.

16 Designation in conformity with this Order requires:

17 (a) for information in documentary form (e.g., paper or electronic documents, but  
18 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing  
19 Party affix the legend "CONFIDENTIAL" to each page that contains protected material. If only a  
20 portion or portions of the material on a page qualifies for protection, the Producing Party also  
21 must clearly identify the protected portion(s) (e.g., by making appropriate markings in the  
22 margins).

23 A Party or Non-Party that makes original documents or materials available for inspection need  
24 not designate them for protection until after the inspecting Party has indicated which material it  
25 would like copied and produced. During the inspection and before the designation, all of the  
26 material made available for inspection shall be deemed "CONFIDENTIAL." After the inspecting  
27 Party has identified the documents it wants copied and produced, the Producing Party must  
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1 determine which documents, or portions thereof, qualify for protection under this Order. Then,  
2 before producing the specified documents, the Producing Party must affix the  
3 “CONFIDENTIAL” legend to each page that contains Protected Material. If only a portion or  
4 portions of the material on a page qualifies for protection, the Producing Party also must clearly  
5 identify the protected portion(s) (e.g., by making appropriate markings in the margins).

6 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the  
7 Designating Party identify on the record, before the close of the deposition, hearing, or other  
8 proceeding, all protected testimony.

9 (c) for information produced in some form other than documentary and for any other  
10 tangible items, that the Producing Party affix in a prominent place on the exterior of the container  
11 or containers in which the information or item is stored the legend “CONFIDENTIAL.” If only a  
12 portion or portions of the information or item warrant protection, the Producing Party, to the  
13 extent practicable, shall identify the protected portion(s).

14 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
15 designate qualified information or items does not, standing alone, waive the Designating Party’s  
16 right to secure protection under this Order for such material. Upon timely correction of a  
17 designation, the Receiving Party must make reasonable efforts to assure that the material is  
18 treated in accordance with the provisions of this Order.

19 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

20 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of  
21 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality  
22 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
23 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to  
24 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
25 original designation is disclosed.

26 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution  
27 process by providing written notice of each designation it is challenging and describing the basis  
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1 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written  
2 notice must recite that the challenge to confidentiality is being made in accordance with this  
3 specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in  
4 good faith and must begin the process by conferring directly (in voice to voice dialogue; other  
5 forms of communication are not sufficient) within 14 days of the date of service of notice. In  
6 conferring, the Challenging Party must explain the basis for its belief that the confidentiality  
7 designation was not proper and must give the Designating Party an opportunity to review the  
8 designated material, to reconsider the circumstances, and, if no change in designation is offered,  
9 to explain the basis for the chosen designation. A Challenging Party may proceed to the next  
10 stage of the challenge process only if it has engaged in this meet and confer process first or  
11 establishes that the Designating Party is unwilling to participate in the meet and confer process in  
12 a timely manner.

13         6.3     Judicial Intervention. If the Parties cannot resolve a challenge without court  
14 intervention, the Designating Party shall file and serve a motion to retain confidentiality under  
15 Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days  
16 of the initial notice of challenge or within 14 days of the parties agreeing that the meet and confer  
17 process will not resolve their dispute, whichever is earlier. Each such motion must be  
18 accompanied by a competent declaration affirming that the movant has complied with the meet  
19 and confer requirements imposed in the preceding paragraph. Failure by the Designating Party to  
20 make such a motion including the required declaration within 21 days (or 14 days, if applicable)  
21 shall automatically waive the confidentiality designation for each challenged designation. In  
22 addition, the Challenging Party may file a motion challenging a confidentiality designation at any  
23 time if there is good cause for doing so, including a challenge to the designation of a deposition  
24 transcript or any portions thereof. Any motion brought pursuant to this provision must be  
25 accompanied by a competent declaration affirming that the movant has complied with the meet  
26 and confer requirements imposed by the preceding paragraph.

27         The burden of persuasion in any such challenge proceeding shall be on the Designating  
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1 Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose  
2 unnecessary expenses and burdens on other parties) may expose the Challenging Party to  
3 sanctions. Unless the Designating Party has waived the confidentiality designation by failing to  
4 file a motion to retain confidentiality as described above, all parties shall continue to afford the  
5 material in question the level of protection to which it is entitled under the Producing Party's  
6 designation until the court rules on the challenge.

7 7. ACCESS TO AND USE OF PROTECTED MATERIAL

8 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed  
9 or produced by another Party or by a Non-Party in connection with this case only for prosecuting,  
10 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only  
11 to the categories of persons and under the conditions described in this Order. When the litigation  
12 has been terminated, a Receiving Party must comply with the provisions of section 13 below  
13 (FINAL DISPOSITION).

14 Protected Material must be stored and maintained by a Receiving Party at a location and  
15 in a secure manner that ensures that access is limited to the persons authorized under this Order.

16 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered  
17 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any  
18 information or item designated "CONFIDENTIAL" only to:

19 (a) the Receiving Party's Outside Counsel of Record in this action, as well as  
20 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the  
21 information for this litigation and who have signed the "Acknowledgment and Agreement to Be  
22 Bound" that is attached hereto as Exhibit A;

23 (b) the officers, directors, and employees (including House Counsel) of the Receiving  
24 Party to whom disclosure is reasonably necessary for this litigation and who have signed the  
25 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

26 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is  
27 reasonably necessary for this litigation and who have signed the "Acknowledgment and  
28



1 Agreement to Be Bound” (Exhibit A);

2 (d) the court and its personnel;

3 (e) court reporters and their staff, professional jury or trial consultants, mock jurors,  
4 and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who  
5 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

6 (f) during their depositions, witnesses in the action to whom disclosure is reasonably  
7 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),  
8 unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed  
9 deposition testimony or exhibits to depositions that reveal Protected Material must be separately  
10 bound by the court reporter and may not be disclosed to anyone except as permitted under this  
11 Stipulated Protective Order. However, notwithstanding the foregoing, the Receiving Party may  
12 disclose Protected Material to the officers, directors, and employees (including House Counsel)  
13 of the Designating Party who are witnesses even if such officers, directors, or employees decline  
14 to sign the “Acknowledgment and Agreement to Be Bound.”

15 (g) the author or recipient of a document containing the information or a custodian or  
16 other person who otherwise possessed or knew the information.

17 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
18 LITIGATION

19 If a Party is served with a subpoena or a court order issued in other litigation that compels  
20 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that  
21 Party must:

22 (a) promptly notify in writing the Designating Party. Such notification shall include a  
23 copy of the subpoena or court order;

24 (b) promptly notify in writing the party who caused the subpoena or order to issue in  
25 the other litigation that some or all of the material covered by the subpoena or order is subject to  
26 this Protective Order. Such notification shall include a copy of this Stipulated Protective Order;  
27 and  
28

1 (c) cooperate with respect to all reasonable procedures sought to be pursued by the  
2 Designating Party whose Protected Material may be affected.

3 If the Designating Party timely seeks a protective order, the Party served with the  
4 subpoena or court order shall not produce any information designated in this action as  
5 “CONFIDENTIAL” before a determination by the court from which the subpoena or order  
6 issued, unless the Party has obtained the Designating Party’s permission. The Designating Party  
7 shall bear the burden and expense of seeking protection in that court of its confidential material –  
8 and nothing in these provisions should be construed as authorizing or encouraging a Receiving  
9 Party in this action to disobey a lawful directive from another court.

10 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS  
11 LITIGATION

12 (a) The terms of this Order are applicable to information produced by a Non-Party in  
13 this action and designated as “CONFIDENTIAL.” Such information produced by Non-Parties in  
14 connection with this litigation is protected by the remedies and relief provided by this Order.  
15 Nothing in these provisions should be construed as prohibiting a Non-Party from seeking  
16 additional protections.

17 (b) In the event that a Party is required, by a valid discovery request, to produce a  
18 Non-Party’s confidential information in its possession, and the Party is subject to an agreement  
19 with the Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

20 (1) promptly notify in writing the Requesting Party and the Non-Party that some  
21 or all of the information requested is subject to a confidentiality agreement with a Non-Party;

22 (2) promptly provide the Non-Party with a copy of the Stipulated Protective  
23 Order in this litigation, the relevant discovery request(s), and a reasonably specific description of  
24 the information requested; and

25 (3) make the information requested available for inspection by the Non-Party.

26 (c) If the Non-Party fails to object or seek a protective order from this court within 14  
27 days of receiving the notice and accompanying information, the Receiving Party may produce  
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1 the Non-Party's confidential information responsive to the discovery request. If the Non-Party  
2 timely seeks a protective order, the Receiving Party shall not produce any information in its  
3 possession or control that is subject to the confidentiality agreement with the Non-Party before a  
4 determination by the court. Absent a court order to the contrary, the Non-Party shall bear the  
5 burden and expense of seeking protection in this court of its Protected Material.

6 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

7 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected  
8 Material to any person or in any circumstance not authorized under this Stipulated Protective  
9 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the  
10 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the  
11 Protected Material, (c) inform the person or persons to whom unauthorized disclosures were  
12 made of all the terms of this Order, and (d) request such person or persons to execute the  
13 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

14 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
15 MATERIAL

16 When a Producing Party gives notice to Receiving Parties that certain inadvertently  
17 produced material is subject to a claim of privilege or other protection, the obligations of the  
18 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This  
19 provision is not intended to modify whatever procedure may be established in an e-discovery  
20 order that provides for production without prior privilege review. Pursuant to Federal Rule of  
21 Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a  
22 communication or information covered by the attorney-client privilege or work product  
23 protection, the parties may incorporate their agreement in the stipulated protective order  
24 submitted to the court.

25 12. MISCELLANEOUS

26 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to  
27 seek its modification by the court in the future.  
28

1           12.2   Right to Assert Other Objections. By stipulating to the entry of this Protective  
2 Order no Party waives any right it otherwise would have to object to disclosing or producing any  
3 information or item on any ground not addressed in this Stipulated Protective Order. Similarly,  
4 no Party waives any right to object on any ground to use in evidence of any of the material  
5 covered by this Protective Order.

6           12.3   Filing Protected Material. Without written permission from the Designating Party  
7 or a court order secured after appropriate notice to all interested persons, a Party may not file in  
8 the public record in this action any Protected Material. A Party that seeks to file under seal any  
9 Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed  
10 under seal pursuant to a court order authorizing the sealing of the specific Protected Material at  
11 issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request  
12 establishing that the Protected Material at issue is privileged, protectable as a trade secret, or  
13 otherwise entitled to protection under the law. If a Receiving Party's request to file Protected  
14 Material under seal pursuant to Civil Local Rule 79-5(d) is denied by the court, then the  
15 Receiving Party may file the information in the public record pursuant to Civil Local Rule 79-  
16 5(e) unless otherwise instructed by the court.

17       13.    FINAL DISPOSITION

18           Within 60 days after the final disposition of this action, as defined in paragraph 4, each  
19 Receiving Party must return all Protected Material to the Producing Party or destroy such  
20 material. As used in this subdivision, "all Protected Material" includes all copies, abstracts,  
21 compilations, summaries, and any other format reproducing or capturing any of the Protected  
22 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must  
23 submit a written certification to the Producing Party (and, if not the same person or entity, to the  
24 Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all  
25 the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has  
26 not retained any copies, abstracts, compilations, summaries or any other format reproducing or  
27 capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to  
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1 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,  
2 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work  
3 product, and consultant and expert work product, even if such materials contain Protected  
4 Material. Any such archival copies that contain or constitute Protected Material remain subject to  
5 this Protective Order as set forth in Section 4 (DURATION).

6 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

7 DATED: April 10, 2019

FINKELSTEIN, BLANKINSHIP,  
FREI-PEARSON & GARBER, LLP

8  
9 By: /s/ Greg Blankinship  
D. GREG BLANKINSHIP (*pro hac vice*)

10 KAPLAN FOX & KILSHEIMER, LLP

11 By: /s/ Mario M. Choi  
12 MARIO M. CHOI

13 *Attorneys for Plaintiffs*  
INES BURGOS and MONGKOL  
14 MAHAVONGTRAKUL

15 GCA LAW PARTNERS, LLP

16 By: /s/ Kimberly A. Donovan  
17 KIMBERLY A. DONOVAN

18 *Attorneys for Defendant*  
SUNVALLEYTEK INTERNATIONAL, INC.

19  
20  
21 **ATTESTATION PURSUANT TO CIVIL LOCAL RULE 5-1(i)(3)**


22 I, Kimberly A. Donovan, attest that concurrence in the filing of this document has  
23 been obtained from the other signatories. I declare under penalty of perjury under the laws of  
24 the United States of America that the foregoing is true and correct.

25 Executed this 10<sup>th</sup> day of April, 2019, at Mountain View, California.

26  
27 /s/ Kimberly A. Donovan  
KIMBERLY A. DONOVAN

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IT IS SO ORDERED.

  
HON. HAYWOOD S. GILLIAM, JR.  
UNITED STATES DISTRICT JUDGE

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, \_\_\_\_\_ [print or type full name], of

4 \_\_\_\_\_  
5 [print or type full address], declare under penalty of perjury that I have read in its entirety and  
6 understand the Stipulated Protective Order that was issued by the United States District Court for  
7 the Northern District of California on \_\_\_\_\_ [date] in the case of *Burgos v.*  
8 *Sunvalleytek International, Inc.*

9 I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I  
10 understand and acknowledge that failure to so comply could expose me to sanctions and  
11 punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner  
12 any information or item that is subject to this Stipulated Protective Order to any person or entity  
13 except in strict compliance with the provisions of this Order.

14 I further agree to submit to the jurisdiction of the United States District Court for the Northern  
15 District of California for the purpose of enforcing the terms of this Stipulated Protective Order,  
16 even if such enforcement proceedings occur after termination of this action.

17 I hereby appoint \_\_\_\_\_ [print or type full name] of

18 \_\_\_\_\_  
19 [print or type full address and telephone number] as my California agent for service of process in  
20 connection with this action or any proceedings related to enforcement of this Stipulated  
21 Protective Order.

22  
23 Date: \_\_\_\_\_

24 City and State where sworn and signed: \_\_\_\_\_

25 Printed name: \_\_\_\_\_

26  
27 Signature: \_\_\_\_\_

28